

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b))

FM Table of Allotments,)

FM Broadcast Stations)

(Harrison, Michigan))

MB Docket No. 03-176

RM-10720

NOTICE OF PROPOSED RULEMAKING

Adopted: July 23, 2003**Released: July 25, 2003****Comments Date: September 15, 2003****Reply Comments Date: September 30, 2003**

By the Assistant Chief, Audio Division:

1 The Audio Division has before it a petition for rule making filed by Commercial Radio of Harrison ("CRH"), proposing the allotment of Channel 280A at Harrison, Michigan. CRH stated its intention to file an application for Channel 280A at Harrison.

2 We believe the proposal warrants consideration because the proposed allotment could provide additional FM broadcast service to the community of Harrison.¹ CRH states that Harrison is located in central Michigan with a population of over 2,000 people. According to CRH, Harrison has its own local government, community schools, civic organizations, U.S. Post Office, medical facilities and numerous businesses that serve the residents of Harrison. A staff engineering analysis indicates that Channel 280A can be allotted to Harrison consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction 14.1 kilometers (8.7 miles) south of the community at coordinates 43-53-33 and 84-49-06. Since Harrison is located within 320 kilometers of the U.S.-Canadian Border, concurrence of the Canadian Government will be requested for the allotment of Channel 280A at Harrison.

3 In view of the fact that the proposed allotment could provide additional FM broadcast service to Harrison, Michigan, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 280A to Harrison. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Harrison, Michigan.

Community	Channel No	
	Present	Proposed
Harrison, Michigan	221A	221A, 280A

¹ Station WVXH, licensed on Channel 221A, is operated by Xavier University as a noncommercial station. An AM station is also licensed in Harrison to Laurie L. Foster operating as Station WKKM(AM).

4 The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

5 Interested parties may file comments on or before September 15, 2003, and reply comments on or before September 30, 2003, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on CRH's counsel, as follows:

Robert J. Buenzle
Law Offices of Robert J. Buenzle
11710 Plaza America Drive, Suite 2000
Reston, Virginia 20190

6 Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

7 The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.²

8 For further information concerning this proceeding, contact Kathleen Scheuerle, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service.

² See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (February 9, 1981).

requirement. Any comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment Appendix

APPENDIX

1 Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached

2 **Showings Required** Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3 **Cut-off protection** The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules)

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4 **Comments and Reply Comments, Service** Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5 **Number of Copies** In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6 **Public Inspection of Filings** All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.